



Ninety-Eighth Legislature - Second Session - 2004
Committee Statement
LB 999

Hearing Date: January 20, 2004

Committee On: Banking, Commerce and Insurance

Introducer(s): (Banking, Commerce and Insurance Committee)

Title: Change provisions relating to banking and finance

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

8 Yes Senators Quandahl, Tyson, Foley, Jensen, Johnson, Loudon,
 Mines, Redfield

No

Present, not voting

Absent

Proponents:

Senator Mark Quandahl

Sam Baird

Robert Hallstrom

Scott Sullivan

Larry Ruth

Representing:

Introducer

NE Department of Banking and Finance

NE Bankers Association

NE Credit Union League

Heartland Community Bankers Association

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 999 (Banking, Commerce and Insurance Committee), introduced at the request of the Department of Banking and Finance, would amend various sections within the banking and finance statutes. The bill, as introduced, would provide, section by section, as follows:

BANKS

Section 1 would amend section 8-113 of the Nebraska Banking Act, which governs the use of the term “bank” and its derivatives, to include necessary and/or generally accepted exceptions to this statute’s prohibition. The new exceptions would include banks and savings

banks chartered by other states, non-profit organizations such as food banks, and banking trade associations.

Section 2 would amend section 8-157.01 of the Nebraska Banking Act, which relates to automatic teller machines (ATMs) and point-of-sale terminals (POSs), to remove a notice requirement for ATM establishment and authorize subsidiaries of financial institutions to establish ATMs and POSs in the same manner and with the same authority as the parent financial institution.

Section 3 would amend section 8-1,140 of the Nebraska Banking Act, which is the “wild-card” statute for state-chartered banks. This provision would be amended to give state-chartered banks the same rights, powers, privileges, benefits, and immunities accorded to a national bank doing business in Nebraska as of the operative date of this section. (This section would be subject to the bill’s emergency clause.) Due to state constitutional restrictions, this statute must be re-enacted annually.

TRUST COMPANIES

Section 4 would amend section 8-208 of the Nebraska Trust Company Act to eliminate the requirement that conveyance of real estate owned or held in trust by a trust company shall be authorized by “a resolution of” the board of directors. This section would require that “such authorization shall be specifically documented in the minutes of the board of directors.”

BUILDING AND LOAN ASSOCIATIONS

Section 5 would amend section 8-355, which is the “wild-card” statute for state-chartered building and loan associations. This provision would be amended to give state-chartered building and loan associations the same rights, powers, privileges, benefits, and immunities accorded to a federal savings and loan association doing business in Nebraska as of the operative date of this section. (This section would be subject to the bill’s emergency clause.) Due to state constitutional restrictions, this statute must be re-enacted annually.

ASSESSMENTS

Section 6 would amend section 8-602, which is the principal fee-setting section for the Department of Banking and Finance, to eliminate a fee for filing a notice to establish an ATM, and to clarify fees for a credit card bank application and charter.

BANK HOLDING COMPANIES

Section 7 would amend section 8-910 of the Nebraska Bank Holding Company Act of 1995 to clean up provisions as they relate to credit card banks.

SALE OF CHECK AND FUNDS TRANSMISSION

Sections 8 to 14 would amend sections 8-1001, 8-1003, 8-1006, 8-1008 to 8-1010, and 8-1012.01 of the Nebraska Sale of Checks and Funds Transmission Act to strengthen the act by updating definitions; increasing the application and annual renewal fees; increasing the bond amounts (with a grandfather provision to July 1, 2005 for current licensees); and clarifying the department’s authority to request information about the company’s business.

CREDIT CARD BANKS

Sections 15 to 20 would amend sections 8-1511 to 8-1513, which regard newly established banks, and enact 3 new sections to update the credit card bank statutes. The updates would include chartering requirements that will match federal standards; cross-references to other state banking statutes that will apply; and clean-up of the acquisition statutes as they relate to credit card banks.

CREDIT UNIONS

Section 21 would amend section 21-17,115 of the Credit Union Act, which is the “wild-card” statute for state-chartered credit unions. This provision would be amended to give state-chartered credit unions the same rights, powers, privileges, benefits, and immunities accorded to a federal credit union doing business in Nebraska as of the operative date of this section. (This section would be subject to the bill’s emergency clause.) Due to state constitutional restrictions, this statute must be re-enacted annually.

MORTGAGE LOANS

Sections 22 and 31 to 33 would amend section 45-101.04, which sets out exceptions to the general usury rate section, and sections 45-1024, 45-1025, and 45-1065 of the Nebraska Installment Loan Act, to correct an error in the predatory lending legislation (LB 218) enacted in 2003. The error (certain references to “mortgage loan as defined in section 45-702” should have been “real property as defined in section 45-702”) has resulted in two interpretations of what installment loan licensees can charge as interest and fees for home equity loans that are not made for the purpose of improving the property.

REVOLVING CHARGE AGREEMENTS

Sections 23 and 24 would amend sections 45-205 and 45-206 of the revolving charge agreement statutes to remove obsolete language and to require sellers to close stale accounts.

INSTALLMENT SALES

Sections 25 and 26 would amend sections 45-342 and 45-346 of the Nebraska Installment Sales Act to remove obsolete language, to require applications for an installment sales license to include audited financial statements, and to set conditions for change of control for installment sales licensees.

REGULATORY COMPLIANCE

Sections 27 to 29 would amend section 45-351 of the Nebraska Installment Sales Act, section 45-921 of the Delayed Deposit Services Licensing Act, and section 45-1017 of the Nebraska Installment Loan Act to shorten the response time for inquiries from the department from 30 to 21 days.

INSTALLMENT LOANS

Sections 30 would amend section 45-1018 of the Nebraska Installment Loan Act to provide that licensees shall file their annual report by March 1 rather than February 15.

Sections 31 would amend section 45-1024 of the Nebraska Installment Loan Act to provide that the first installment period may “not” exceed one month by “more than twenty-one

days and may not fall short of one month by more than eleven days” (rather than may exceed one month by “as much as fifteen days”).

MISCELLANEOUS PROVISIONS

Section 34 would provide that the emergency clause would apply to the wild-card sections (sections 3, 5, and 21).

Sections 35 and 36 would provide repealers.

The bill carries the emergency clause.

Explanation of amendments, if any:

1. The committee amendments would further clarify subdivision (6)(a) of section 45-1024 of the Nebraska Installment Act which governs when limitations on interest rates and origination fees apply to certain home equity loans based on, among other things, whether the sum of the principal amount of the loan and the balance of all other liens do not exceed one hundred percent of “appraised value” of the property. The committee amendments would provide that “[a]cceptable methods of determining appraised value shall be made by the [D]epartment [of Banking and Finance] pursuant to rule, regulation, or order.”

2. The committee amendments would insert the provisions of LB 979 (Quandahl) which would amend various sections of statute regarding finance, as follows (with section numbers shown as they would appear in the bill, as amended):

REAL ESTATE FORECLOSURE

Section 22 would amend section 25-1530 to provide that subject to the right of redemption and the confirmation of the sale, all right, title, interest, and claim of the mortgagor and his or her successors in interest, including all such right, title, interest, and claim in and to such property acquired by the mortgagor or his or her successors in interest subsequent to the execution of the mortgage, shall be deemed terminated as of the time the sheriff or master commissioner accepts the highest bid at the sale.

NONPROBATE TRANSFERS

Section 23 would amend section 30-2734 of the uniform transfer on death security registration statutes in order to expand the definition of “security account” to include an investment management or custody account with a trust company or a trust department of a bank with trust powers, including the securities in the account, a cash balance in the account, and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner’s death.

SUPPORT ENFORCEMENT BANK MATCH SYSTEM

Section 31 would amend section 43-3334 of the support enforcement statutes to provide that upon receipt of an order to withhold and deliver, a payor (financial institution) shall hold property subject to the order “that is in the possession or under the control of the payor at the time the order to withhold and deliver was received.”

CAPITAL EXPANSION

Section 44 would amend section 72-1262 of the Nebraska Capital Expansion Act to (1) expand the definition of “bank” to include “any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank” and (2) expand the definition of “capital stock financial institution” to include “any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution.”

TRUST DEEDS

Section 45 would amend section 76-1006 of the Nebraska Trust Deeds Act to provide that the notice of default in cases involving trust property used in farming operations must set forth, among other things, a statement of the amount of interest accrued on the unpaid principal sum to and including the date the notice of default is “signed by the trustee or the trustee’s attorney” rather than “filed for record.”

Section 46 would amend section 76-1009 of the Nebraska Trust Deeds Act to provide that the person conducting the sale may postpone the sale “of all or any portion of the property” until it is completed and notice of postponement shall be given by public declaration thereof by such person at the time and place appointed for the sale, and that no other notice need be given unless the sale is postponed for longer than “forty-five days” rather than “one day” beyond the day designated in the notice of sale.

Section 47 would amend section 76-1010 of the Nebraska Trust Deeds Act to provide that all right, title, interest, and claim of the trustor and his or her successors in interest in and to the property sold, including all such right, title, interest, and claim in and to such property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed shall be deemed to be terminated as of the time the trustee or the attorney for the trustee accepts the highest bid at the time of the sale.

Section 48 would amend section 76-1012 of the Nebraska Trust Deeds Act to provide that whenever any obligation secured by a trust deed has become due, in the event the trustor or his or her successor in interest or any other person makes payment of the entire amount due at any time subsequent to the breach or default and prior to the sale of the trust property, the beneficiary shall be allowed to collect the costs and expenses incurred in enforcing the obligation.

PUBLIC FUNDS DEPOSIT

Section 49 would amend section 77-2365.01 to expand the definition of “qualifying mutual financial institution” to include “any branch thereof in this state, or any branch in this state of a qualifying mutual financial institution which maintained a main chartered office in this state prior to becoming a branch of such qualifying mutual financial institution.”

Section 50 would amend section 77-2366 to provide that “capital stock financial institutions” shall include state and national banks, capital stock state building and loan

associations, capital stock federal savings and loan associations, capital stock federal savings banks, and capital stock state savings banks, “which have a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution.”

Section 51 would amend section 77-2387 of the Public Funds Deposit Security Act to (1) expand the definition of “bank” to include “any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank” and (2) expand the definition of “capital stock financial institution” to include “any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution.”

PUBLIC FUNDS INVESTMENT

Section 52 would enact a new section to provide that to the extent that the funds of this state or any political subdivision may be invested in certificates of deposit or time deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization shall include the investment of funds in certificates of deposit and time deposits in accordance with the following conditions: (1) the institution in this state through which the investment of funds is initially made arranges for the deposit of a portion or all of such funds in one or more certificates of deposit with other institutions located in the United States; (2) each such certificate of deposit is fully insured by the FDIC; (3) the institution through which the investment of funds was initially made acts as a custodian for the state or political subdivision with respect to any certificate of deposit issued for the account of the state or political subdivision; and (4) at the time the funds are deposited into and such certificates of deposit are issued by other institutions, the institution through which the investment of funds in certificates of deposit or time deposits was initially made receives an amount of deposits from customers of other institutions located in the United States which is equal to or greater than the amount of the investment of funds in certificates of deposit or time deposits initially made by the state or political subdivision.

3. The committee amendments would insert the provisions of LB 885 (Quandahl) which would amend the Nebraska Uniform Trust Code (UTC), sections 30-3801 to 30-38,110 [UTC Sections 101 to 1106], in order to make clarifying and clean-up changes recommended by (1) the National Conference of Commissioners on Uniform State Laws, and (2) the Nebraska UTC Study Group assembled pursuant to interim study resolution LR 84. The Nebraska UTC was enacted in 2003 and becomes operative on January 1, 2005. The Uniform Law Commissioners promulgated the UTC in 2000 as the first truly national codification of the law of trusts. The inserted sections would provide, as follows (with section numbers shown as they would appear in the bill, as amended):

UNIFORM TRUST CODE

Section 24 would amend subsection (c) of section 30-3811 [UTC Section 111(c)](Nonjudicial settlement agreements) to provide that, with regard to binding nonjudicial settlement agreements, a spendthrift provision in the terms of the trust is presumed to constitute a

material purpose of the trust. The experience of Nebraska practitioners is that spendthrift provisions are most often intended to be a material purpose of the trust. Nebraska Supreme Court decisions have consistently been to the same effect. This amendment corresponds to the proposed amendment in subsection (c) of section 30-3837 [UTC Section 411(c)] on modification or termination of a noncharitable irrevocable trust by consent. This amendment is recommended by the LR 84 Interim Study Group.

Section 25 would amend subsection (a) of section 30-3837 [UTC Section 411(a)] (Modification or termination of noncharitable irrevocable trust by consent) to provide that a settlor's power to consent to a noncharitable irrevocable trust's "modification" as well as termination may be exercised as otherwise provided in this section by an agent under a power of attorney or by the settlor's conservator or guardian with court approval. This amendment is recommended to the states by the Uniform Law Commissioners.

This section would also amend subsection (c) of section 30-3837 [UTC Section 411(c)] to provide that a spendthrift provision in the terms of a noncharitable irrevocable trust is presumed (rather than is "not" presumed) to constitute a material purpose of the trust. The experience of Nebraska practitioners is that spendthrift provisions are most often intended to be a material purpose of the trust. Nebraska Supreme Court decisions have consistently been to the same effect. This amendment corresponds to the proposed amendment in subsection (c) of section 30-3811 [UTC Section 111(c)] on nonjudicial settlement agreements. This amendment is recommended by the LR 84 Interim Study Group.

Section 26 would amend section 30-3854 [UTC Section 602] (Revocation or amendment of revocable trust) to provide in a new subdivision (b)(3) that upon the revocation or amendment of a revocable trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment. This amendment, in conjunction with the proposed repeal of subsection (b) of section 30-3855 [UTC Section 603(b)], is recommended to the states by the Uniform Law Commissioners.

Section 27 would amend section 30-3855 [UTC Section 603] (Settlor's powers) to repeal subsection (b) which provides that if a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust. This amendment, in conjunction with the proposed adoption of new subdivision (b)(3) of section 30-3854 [UTC Section 602(b)(3)], is recommended to the states by the Uniform Law Commissioners.

This section also would insert language in subsection (a) of section 30-3855 [UTC Section 603(a)] to clarify that upon the incapacity of the settlor of a revocable trust, the duties of the trustee continue to be owed exclusively to the settlor so long as the power to revoke the trust may be exercised by an agent, conservator, or guardian of the settlor, or if an agent, conservator, or guardian holds a power of withdrawal on behalf of the settlor. This amendment incorporates language contained in the official comment to UTC Section 602. This amendment is recommended by the LR 84 Interim Study Group.

Section 28 would amend subsection (e) of section 30-3867 [UTC Section 802(f)] (Duty of loyalty) to clarify provisions which impose duties on a trustee which receives compensation for providing investment advisory or investment management services from an investment

company or investment trust in which the trustee invests trust property. This amendment is recommended to the states by the Uniform Law Commissioners.

Section 29 would amend subsection (b) of section 30-3897 [UTC Section 1008(b)] to provide that this subsection's presumption that an exculpatory term drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship does not apply if the settlor was represented by independent legal counsel. This amendment makes clear in statute what is stated in the official comment to UTC Section 1008: "If the settlor was represented by independent counsel, the settlor's attorney is considered the drafter of the instrument even if the attorney used the trustee's forms." This amendment was recommended by the LR 84 Interim Study Group.

Section 30 would amend section 30-38,110 [UTC Section 1106] (Application to existing relationships) to repeal subdivision (a)(4) which provides that, on January 1, 2005, any rule of construction or presumption provided in the Nebraska UTC applies to trust instruments executed before January 1, 2005, unless there is a clear indication of a contrary intent in the terms of the trust. This amendment is similar to a modification made by the Nebraska Legislature in 1974 when it omitted similar uniform language from the enactment of the Nebraska Probate Code. The main purpose is to assure that the intention of the settlor is measured by the conditions in effect when the trust instrument was written. This amendment is recommended by the LR 84 Interim Study Group.

This section would also insert a new subsection (d) in section 30-38,110 [UTC Section 1106] to provide that the following provisions apply only to trusts which become irrevocable on or after January 1, 2005:

--- Subsection (a) of section 30-3838 [UTC Section 412(a)] (Modification or termination because of unanticipated circumstances or inability to administer trust effectively) which provides that the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust.

--- Section 30-3839 [UTC Section 413] (*Cy pres*) which provides that the court may modify or terminate a charitable trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful.

--- Subsection (b) of section 30-3848 [UTC Section 503(b)] (Exceptions to spendthrift provision) which provides that, even if a trust contains a spendthrift provision, holders of a judgment or court order for support or maintenance or judgment creditors may obtain a court order attaching present or future distributions to or for the benefit of the beneficiary.

--- Subsection (c) of section 30-3849 [UTC Section 504(c)] (Discretionary trusts; effect of standard) which provides that to the extent a trustee of a discretionary trust has not complied with a standard of distribution or has abused a discretion, a distribution may be ordered by the court against the beneficiary for support or maintenance.

--- Subdivision (b)(1) of section 30-3879 [UTC Section 814(b)(1)] (Discretionary powers) which provides that, unless the terms of the trust otherwise expressly indicate, a person other than a settlor who is a beneficiary and a trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance.

Each of these provisions, described above, appears to change Nebraska law with respect to beneficial or ownership trust interests. The LR 84 Interim Study Group recommends that they should be applicable only to trusts which become irrevocable on or after the operative date of the Nebraska UTC. (January 1, 2005)

4. The committee amendments would provide that the inserted provisions of LB 979 (sections 22, 23, 31, and 44 to 52) would be subject to the emergency clause and that the inserted provisions of LB 885 (sections 24 to 30) would be subject to an operative date of January 1, 2005.

Senator Mark Quandahl, Chairperson